

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPLICATION NO. 398 OF 2004**

Khetan Brothers

... Petitioners

Vs.

Chemstar Organics (I) Ltd.

... Respondents

Mr. S.K. Shroff i/by Ms. Seema Sharma for
Applicant.

Mr. G.B. Kedia with Ms. Divya Singhavi for
Respondents.

**CORAM : A.M. KHANWILKAR,J.
DATED : JUNE 16, 2005**

P.C.

. Heard counsel for the parties.

2. By this application, the applicant/respondent company prays that the order passed by this court dated 25.8.2003 admitting company Petition and directing advertisement to be published be recalled on the ground that the same is exparte. The only reason mentioned in the affidavit in support of the application as can be discerned from the averments in Paragraph 13 and 14 in the first place is that, on the relevant date, the matter all of a sudden appeared on the board and the advocate for the respondent company could not reach the court in time. The second ground pressed into service is that, the respondent company was constantly in touch with the Petitioner. However, it is only

when the settlement talks failed and negotiations reached no return point, the applicant/respondent company thought it necessary to take out present application which has been filed on 5.5.2004.

3. The counsel for the applicant submits that this court should take liberal attitude in recalling the exparte order passed against the applicant/respondent company. It is suggested that the grounds set out in the affidavit in support of the application are sufficient cause for which reason indulgence should be shown to the applicant. It is also contended that the litigant should not be made to suffer for the mistake of the advocate. To support this plea reliance is placed on the decision in A.I.R.. 1987 S.C. 1353 in the case of Collector, Land Acquisition, Anantnag and another Vs. Ms. Katiji and others and AIR 1981 Supreme Court 1400 in the case of Rafiq and another Vs. Munshilal and another.

4. However, after going through the pleadings and the record of the case, I have no hesitation in taking a view that the explanation offered by the applicant/respondent company is not at all sufficient, rather it is false and misleading. This opinion is founded on materials on record. In

Paragraph 13 of the affidavit, it is stated that the impugned order dated 25.8.2003 was passed exparte as the matter all of a sudden appeared on the board and advocate for the respondent company could not reach the court in time. The falsity of this assertion can be seen from the following events :

. That before passing of the order dated 25.8.2003, in the first place the respondent company was served with the statutory notice to which no reply was sent, though the said notice was duly served on the respondent company. That may not be a relevant fact for considering the present application. So far as the fact relevant for the present application is concerned, it is seen that the notice of Company Petition was duly served on the respondent company well in time. No reply was filed inspite of the said notice. Eventually, the matter was notified on 25.8.2003. By that date, from the record, it is seen that the respondent company did not bother to engage any advocate. The appearance of the advocate has come on record only on 23.1.2004. In that sense, false plea is taken in the affidavit that the matter was missed because advocates for the respondents could not reach the court in time. Besides, the impugned order was

passed on 25.8.2003, the respondent company was
 duly informed about the order by the Petitioner
 immediately on 1.9.2003. The fact that the said
 communication was sent to the respondent company is
 not in dispute. The order dated 25.8.2003 was self
 operative order, which provided liberty to the
 respondent company to avoid order of admission of
 the petition. No steps were taken to avail of the
 liberty granted in the said order. Thereafter once
 again the matter appeared under caption direction
 on 11.2.2004. No appearance was made even on that
 date on behalf of the respondent company.
 Resultantly, this court passed the order of formal
 admission of company petition in view of
 conditional order already passed earlier. The
 court further permitted advertisement of the
 admission of the Petition. Even this order was
 duly communicated to the respondent company on
 20.2.2004. As mentioned earlier, the advocate for
 the respondent entered appearance for the first
 time in this court on 23.1.2004 but did not bother
 to appear when the matter was placed under caption
 directions on 11.2.2004. In any case the order
 passed on 11.2.2004 even though communicated to the
 respondent company, there is nothing to show that
 the respondent company immediately contacted their
 advocates to take steps for filing of the present

application, if they were so advised. The present application however, is filed only on 5.5.2004. The explanation offered as stated earlier, is that it is only when the negotiations failed and reached no return point, the company thought it necessary to file present application, which, as pointed out earlier, was filed on 5.5.2004. Viewed in this perspective, the reasons stated in the subject application for default caused on 25.8.2003 as well as reasons which prevented the applicant from preferring the present application till 5.8.2004 is not at all sufficient cause. In my opinion, the same is a false plea taken only to gain advantage of their own wrong. The question is, what is the advantage which would enure to the applicants. The company petition filed by the Petitioner is founded on the claim of outstanding amount of Rs. 43 lacs. In spite of the conditional order dated 25.8.2003, no deposit has been made. In other words, the applicant respondent company was bound to be interested in buying time. By this application the applicant wants to persuade this court to re-adjust the clock and reverse the entire process, which has progressed as a consequence of order dated 25.8.2003. The litigant who has not approached the court with clean hands, it is well settled, does not deserve any indulgence, rather such application

has to be thrown out at the threshold. In my opinion, the reported decisions pressed into service, on behalf of the applicant, has no application to the fact situation of the present case for the view that I have already taken as mentioned above. It is also rightly brought to my notice by the counsel for the Petitioner that there is already another petition pending against the applicant/respondent company being Company Petition No. 658 of 2004 in which conditional order has been passed. No doubt there is still time for the applicant/ Respondent company to comply with the said conditional order which has been passed on 7.4.2005. As per that order the applicant/ Respondent company is required to pay the amount of Rs.81,93,154/- within twelve weeks from 7.4.2005. It is not necessary for me to burden this order with other facts of the case. Suffice it to observe that the applicant has failed to make out sufficient cause nor it is possible to say that the explanation offered by the applicant is bona fide.

. Accordingly, this application is dismissed with costs.

(A.M. KHANWILKAR,J.)